A **FOO TON HIN**

v.

MALAYSIAN BAR & ORS

B HIGH COURT MALAYA, KUALA LUMPUR
KP GENGADHARAN NAIR J
[ORIGINATING SUMMONS NO: R1-17-60-06]
15 FEBRUARY 2007

C ***CIVIL PROCEDURE:*** *Striking out - Application for - Application to strike out plaintiff's action for declaratory reliefs regarding second to fourth defendants (scrutineers) decision to nullify Bar Council election - Whether plaintiff had locus standi to institute and maintain proceedings - Whether plaintiff's rights as member of Malaysian Bar violated*

D ***CIVIL PROCEDURE:*** *Locus standi - Action for reliefs - Seeking declaration that second to fourth defendants (scrutineers) acted ultra vires Legal Profession Act 1976 when they declared Bar Council Elections null and void - Whether plaintiff had locus standi to institute and maintain*
E *proceedings - Whether plaintiff's rights as member of Malaysian Bar violated*

LEGAL PROFESSION: *Members' election - Bar Council - Bar Council election nullified by second to fourth defendants (scrutineers) - Plaintiff seeking declaration that second to fourth defendants (scrutineers)*
F *acted ultra vires Legal Profession Act 1976 - Whether plaintiff had locus standi to institute and maintain proceedings - Whether plaintiff's rights as member of Malaysian Bar violated*

The plaintiff, a member of the Malaysian Bar, filed an originating
G summons seeking, *inter alia,* a declaration that the second to fourth defendants acted *ultra vires* the Legal Profession Act 1976 ('the Act') when they purported to declare the Bar Council Elections 2007-2008 null and void. The reliefs sought stem from the report of the scrutineers (second to fourth defendants herein) given to
H the Bar Council after they had conducted the vote count for the elections for members of the Bar Council. The second defendant, *vide* encl. 30, sought to strike out the plaintiff's action on the grounds that the plaintiff lacked the *locus standi* to bring and maintain this action and further that the proper parties were not
I before the court *ie* that the plaintiff had failed to bring in all the parties who were directly affected by this application, especially the candidates who stood for the elections which was the subject

matter of this action. The second defendant also submitted that the plaintiff had not established that he had suffered or would suffer special injury or that his interest would be peculiarly or substantially affected. In supporting the second defendant's application, the seventh and eighth defendants submitted that the plaintiff was far removed from the defendants and spoke only for himself (the plaintiff) as he was not acting in any representative capacity. It was urged upon the court that the plaintiff must satisfy both the threshold and substantive *locus standi*.

Held (allowing second defendant's application (encl. 30) and striking out plaintiff's application (encl. 1)):

(1) The issue of 'threshold' and 'substantive' *locus standi* had become a fused one and need not be compartmentalized to be decided in isolation of each other. The plaintiff herein was not in imminent danger of facing any consequences of any *ultra vires* acts or of being exposed to potential prosecution for any offence. The plaintiff's rights as a member of the Bar have not been violated by the scrutineers or the Bar Council and/or the Malaysian Bar to clothe him with the *locus standi* to institute and maintain this action against the scrutineers and/or the Malaysian Bar. The plaintiff did not have the locus *standi* to institute and maintain these proceedings. The proper party to seek relief in this matter, if any, would be the Malaysian Bar acting through the Bar Council and/or the candidates for the elections who would be directly affected by the decision of the scrutineers. (paras 12, 15 & 16)

(2) The plaintiff, instead of filing this action so hurriedly, ought to have given the Bar Council space and time to resolve the matter or failing that to decide on the next course of action instead of rushing so very urgently to this court with this action. The plaintiff in his hurry to file this action appeared to have forgotten that disputes such as these may also be resolved through conciliation and mediation which is actively advocated by the Malaysian Bar. (para 17 & 18)

Case(s) referred to:

Government of Malaysia v. Lim Kit Siang [1988] 2 MLJ 12 ***(refd)***

Majlis Peguam Malaysia & Ors v. Raja Segaran Krishnan & Other Appeals [2004] 4 CLJ 239 CA ***(refd)***

Tan Sri Hj Othman Saat v. Mohamed Ismail [1982] 2 MLJ 177 ***(refd)***

Legislation referred to:
Legal Profession Act 1976, ss. 44(c), 47, 49, 50
Rules of the High Court 1980, O. 15 r. 6

For the plaintiff - Tommy Thomas
For the 1st defendant - Lambert Rasaratnam (N Navaratnam with him)
For the 2nd defendant - Zainur Zakaria (Annou Xavier with him)
For the 3rd defendant - Dato' Cecil Abraham (Sunil Abraham with him)
For the 4th defendant - M Skelchy
For the 5th defendant - RR Sethu (Chew Swe Yoke with him)
For the 6th defendant - Francis Brigged
For the 7th & 8th defendants - Cyrus Das (Alvin Julian with him)

Reported by Suhainah Wahiduddin

JUDGMENT

KP Gengadharan Nair J:

[1] In November of every year the Malaysian Bar through the Bar Council conducts the elections for members of the Bar Council. The process commences in September with the Bar Council inviting nominations for the said elections. The Legal Profession Act 1976 (LPA) in ss. 49 and 50 stipulate how the said election is to be conducted.

[2] The said sections read as follows:

> S. 49(1) Every year at least one week before the month of October the Bar Council shall inform all members of the Malaysian Bar that nominations for the election of the members of the Bar Council referred to in section 47(3)(c) may be made and must reach the office of the Malaysia Bar during the month of October.
>
> (2) Every nomination of a candidate for election:
>
> (a) shall be of a person qualified to be a candidate under this Act;
>
> (b) shall be in writing signed by not less than three members;
>
> (c) shall name only one candidate and his consent shall be endorsed thereon.

(3) The names of candidates for election nominated in accordance with subsection (1) shall be sent to or deposited at the office of the Malaysian Bar in the month of October in each year.

S. 50(1) The annual election of members of the Bar Council referred to in section 47(2)(c) shall, subject to section 51, be by postal ballot.

(2) The Bar Council shall fix and publish during the first week of November in every year and notify every member of the Malaysian Bar by letter of:

(a) the names of the candidates nominated for election in accordance with section 49;

(b) the number of persons for whom each member is entitled to vote;

(c) the last day for the return of the postal ballot which shall be the last day of November;

(d) the address to which the postal ballot shall be returned;

(e) the names of three scrutineers.

(3) The Bar Council shall at the same time also forward to every member a ballot paper containing the names of all the candidates nominated under section 49.

(4) All envelopes containing ballot papers received by the Bar Council shall be kept unopened and shall be delivered to the scrutineers on the first working day after the last day of November.

(5) The scrutineers shall count the ballots and declare to the Secretary of the Bar Council the persons elected not later than the end of the first week of December of each year and thereupon the Secretary of the Bar Council shall forthwith advise each State Bar Committee of the persons so elected;

(6) Any accidental failure on the part of the Bar Council to comply with this section or of any rules made with respect to elections to the Bar Council shall not invalidate an election.

[3] The composition of the Bar Council is provided for in s. 47 of the LPA as:

S. 47(1) For the proper management of the affairs of the Malaysian Bar and for the proper performance of its functions under this Act there shall be a Council to be known as the Bar Council.

(2) The Bar Council shall consist of the following:

(a) the immediate past President and Vice-President of the Malaysian Bar;

(b) the chairman of each State Bar Committee and the members elected to represent each State Bar Committee pursuant to section 70(7);

(c) members elected pursuant to section 50.

[4] In November 2006 the Bar Council sent out the postal ballots containing the names of 34 candidates proposed for election (to elect 12) as the members of the Bar Council for the year 2007/2008 to its members and named Dato' Dr. Haji Yaacob Hussain Merican, Mr. S. Radhakrishnan & Mr. Inderjit Singh, all senior law practitioners and experienced persons, as the three scrutineers. These three scrutineers are the 2nd to the 4th defendants respectively herein. This suit by the plaintiff initially against the Malaysian Bar and the three scrutineers was filed by plaintiff, a member of the Bar, as a result of the events he described in his affidavit in support of his action as follows (translated into English):

Para 7. The 2nd to 4h Defendants are well known Advocates and Solicitors who have acted as scrutineers for many years. Their experience, integrity and independence have never been questioned. They were again appointed by the Bar Council to scrutinize the 2007-8 elections.

Para 8. Towards the end of September 2006, I received a circular from the Bar Council dated 21st September 2006 informing members of the Malaysian Bar that nominations for the election of members of the Bar Council may be made on or before 31st October 2006. I personally did not nominate anyone.

Para 9. In the first week of November 2006 I received a second circular from the Bar Council dated 1st November 2006 containing a list of names of 34 candidates who were proposed for election as members of the Bar Council for the year 2007/2008. Enclosed with the circular was a ballot paper containing the names of

all the candidates and an envelope printed with the address of the Bar Council. Finally, the said circular listed the names of the 2nd to 4th Defendants as scrutineers.

Para 10. I duly voted, and sent the ballot paper by hand to the Bar Council in the envelope enclosed with the second circular. Therefore, I do not have in my possession the ballot paper that I had used.

Para 11. In the past years, the results of the elections are announced by the Bar Council in the first week of December of each year. In fact, in recent years, the results are posted on the Bar Council's web-site.

Para 12. However, to my utter shock, I read in the newspapers published on 4th December 2006 that some 50 forged ballot papers was cast amongst the postal ballot papers. The forged ballot papers were apparently discovered by the three scrutineers appointed by the Bar Council to oversee the counting of votes when the votes were counted on 1st December 2006.

Para 13. I thereafter went into the Malaysian Bar website to discover more details on the matter. I read the Report of the Three Scrutineers dated 1st December 2006 which reported on the forged ballot papers and concluded with a declaration by the scrutineers that the election of members of the Bar Council for the year 2007/2008 was null and void.

Para 14. On or about 5th December 2006, I downloaded from the Malaysian Bar website a copy of the police report lodged on behalf of the Bar Council by its acting Executive Director, Mr. Kenneth Goh on 3rd December 2006.

[5] The plaintiff then goes on in his affidavit to argue as follows:

Para 15. According to the Report of the Scrutineers dated 1st December 2006 and published in the Bar's web-site, after counting the ballot papers on 1st December 2006, the position was as follows:

(i) Total number issued 12,353

(ii) Total number received 3,370

(iii) Total number rejected as they were replacement ballot papers 18

(iv) Total number forged ballot papers 50

(v) Total number of spoilt ballot papers 25

(vi) Total number of ballot papers rejected on the ground the serial numbers were torn 2

Para 16. A simple solution to the problem would have been for, the scrutineers to have verified the authenticity of the 3,370 ballot papers received by the Bar Council by comparing and matching each and every ballot against its counterfoil, and discarding and excluding from the vote count any ballot that may, in their judgment, not be authentic. The scrutineers apparently justify their decision in not completing their duty by stating that since a police report has been lodged by the Bar Council, they do not wish to continue with their tasks so as not to tamper with any evidence that the police may require for their investigation.

Para 17. Having regard to the forgery, the Bar Council acted properly and responsibly in lodging a police report. It is vital that the police investigate the matter thoroughly, arrest the persons concerned and thereafter charge them. In this endeavour, all members of the Malaysian Bar and the Bar Council should extend all necessary cooperation to the police and the prosecuting agencies.

Para 18. That said, I cannot understand why the scrutineers cannot continue to "count the ballots and declare to the Secretary of the Bar Council the persons elected" under Section 50(5) merely because a police report is lodged. As I understand Section 50, the statutory process of postal balloting can continue until the declaration by the scrutineers under Section 50(5) of the 12 persons elected, not withstanding the lodging of the police report. They are not mutually exclusive.

Para 19. By so declining to continue with their functions, the scrutineers are abdicating their statutory duty which would result in the statutory provisions not being complied with. Further, the scrutineers may be acting in breach of the Act by their omission to complete their duty because it prevents the Secretary of the Bar Council from complying with his statutory duty under section 50(5). I cannot see any difference in principle between a spoilt ballot and a forged ballot: both are cast from time to time during elections of any organization.

In each case, they are excluded from the count. Although this is apparently the first time that forgeries have been detected in the postal balloting exercise conducted by the Malaysian Bar, and however morally reprehensible and despicable the conduct of the forgers are, the fundamental fact is that out of the 3,370 votes cast only 50 are so far forgeries, which works out to a mere 1 1/2% of the votes cast. In order to protect the integrity of the voting system and the interests of the vast majority of the 3,370 votes who honestly cast their votes, it is critical that the process under Section 50 be completed and finality achieved.

Para 20. The alternative would be fresh elections. This option has severe defects. First, there is no guarantee or assurance that any fresh elections will also not be marred by forgeries – that possibility cannot be ruled out. Secondly, the 12 persons who would have been elected if the scrutineers had completed their tasks and declared those elected out of the 34 candidates run the risk of not being re-elected. There is no logical reason why they should suffer such prejudice. Thirdly, the vast majority of lawyers who voted honestly in November 2006 should not have to be asked to vote again merely because of the actions of a dishonest few. Ordering a second election merely falls into their hands, and will serve as a terrible precedent for future elections.

Para 21. Fourthly, there is no power under the Act which authorizes fresh elections to be held. Accordingly, the legitimacy of any fresh elections would be highly questionable and may itself result in further challenges in Court.

Para 22. Finally, any fresh elections would not be able to be completed in accordance with the strict time-table imposed by Section 50. The whole process of sending out fresh ballot papers, gathering votes, counting the same and having the scrutineers declare to the Secretary of the Bar Council the persons elected may well take more than a month. The entire exercise will be completed well after the first week in December 2006 specified in Section 50(5).

Para 23. I am advised by my solicitors and verily believe that in purporting to declare the elections null and void, the scrutineers acted *ultra vires* the Act because they exceeded their powers in so declaring.

A Para 24. As I am merely exercising my duty, as a concerned member of the Malaysian Bar, to ensure that the provisions of the Act are properly complied with and to protect the interests of the Malaysian Bar and the legal profession, I seek no order as to costs against any of the Defendants, if I am successful in my application.

B

[6] The plaintiff then filed this originating summons on 6 December 2006 seeking the following reliefs:

1. A Declaration that the 2nd to 4th Defendants acted *ultra vires* the Legal Profession Act 1976 ("the Act") when they purported on 1st December 2006 to declare the Bar Council Elections 2007-8 null and void;

2. An Order that the 2nd to 4th Defendants verify the authencity of all the ballots cast and counted by them, *"inter alia''* by comparing and matching each and every ballot against its counterfoil, and excluding from the vote count any ballot that is not authentic in their reasoned opinion, and thereafter declare the names of the persons so elected pursuant to Section 50(5) of the Act within seven (7) days of an Order of this Honourable Court;

3. In the alternative to relief (2) above, an Order that 3 partners of an international accounting firm or other fit and proper persons in the judgment of this Honourable Court be appointed scrutineers (at the expense of the 1st Defendant) to take the steps outlined in relief 2 above;

4. An order that the 1st Defendant take all necessary steps to complete the Bar Council Elections 2007-2008 under Section 50(1) of the Act culminating in an announcement by its Secretary, pursuant to Section 50(5) of the Act, of the names of the persons so elected for the Bar Council 2007-2008;

5. An Order extending the time specified in Section 50(5) of the Act for a period of twenty-one (21) days from the date of the Order of this Honourable Court;

6. Further or other relief; and

7. Liberty to apply.

[7] The reliefs sought stem from the report of the scrutineers (2nd to 4th defendants herein) given to the Bar council after they had conducted the vote count. For completeness I set out below the said report dated 1 December 2006. It reads as follows:

We the three scrutineers (1) Inderjit Singh (2) Dato Hj Yaacob Hussain Merican and (3) S. Radhakrishnan were appointed as scrutineers by the Bar Council pursuant to section 50 of the Legal Profession Act 1976. A

Dr Mohd Rafie bin Mohd Shafee by letter dated 22nd November 2006 addressed to the scrutineers stated that he was a candidate and he wanted to observe the counting personally or by his elections agent. The scrutineers also received another letter dated 28 November 2006 from Mr. Boniface Lobo also declaring that he was a candidate. He stated that he was appointing election agents to be present during the opening and inspection of the ballot boxes on 1st December 2006. The scrutineers on 1st December 2006 met the following persons before the counting of ballots – Dr. Mohd Rafie bin Mohd Shafie, Dato' Samatha Murthy M.S (election agent for Dr. Mohd Rafie bin Mohd Shafie), Ms. Chew Swee Yoke and Hj M. Nordin bin Hj. Mohd Yusof (both election agents for Mr. Boniface Lobo). The scrutineers informed them by a memo dated 1st December 2006 that the Replacement Ballots issued by the Bar Council will not be taken into account when the ballots are counted on the ground that there is not provisions for such ballots in Section 50 of the Legal Profession Act 1976. We further informed them that the scrutineers are unable to consider their request to observe the counting of votes either personally or through their agent as there is no provisions in section 50 of the Legal Profession Act to allow such a request. We also informed them that in the event we are wrong in our interpretations they are at liberty to obtain relief elsewhere. B C D E F

The scrutineers met at 9.00 am today at the Bar Council Conference Room (3rd Floor). Two ballot boxes which were securely locked and the keys were handed over to us by Mr. Kenneth Goh, the Acting Executive Director of Bar Council. The ballot boxes were opened by us using the keys provided by Mr. Kenneth Goh in the presence of 39 Bar Council staffs and 19 chambering students who had volunteered to count the ballot papers under our direction and supervision. G

The total number of ballot papers printed by the Bar Council was 12,500 bearing members from No. 0001 to 12,500. However only 12,353 ballot papers were issued to members bearing numbers from 0001 to 12,353. Out of this number, 84 were returned to the Bar Council by the postal authorities as undelivered. These blank ballot papers were not taken into account. H I

A Earlier the Bar Council at the request of members had issued 20 Replacement Ballot papers bearing numbers 0209, 0374, 1650, 2238, 2321, 2334, 2941, 2944, 3592, 3726, 3826, 4656, 5044, 5070, 5172, 5311, 5421, 5512, 10624, 11147. These Replacement Ballot papers were printed on pink paper. The Bar Council
B received 18 replacement ballot papers. The three scrutineers decided to reject these 18 papers on the ground that there is no provision in Section 50 of the Legal Profession Act for the issuance of such ballot papers.

After having counted the ballot papers the details are as follows:

C

(a) Total number received: 3,370

(b) Total number rejected on the ground they are replacement ballot papers: 18

D (c) Total number of forged ballot papers: 50

(d) Total number of spoilt ballot papers: 25

(e) Total number of ballot papers rejected on the ground the serial numbers were torn: 2

E In carrying out the exercise of counting the votes the scrutineers detected 50 ballot papers were forged. Annex herewith marked 'A' a copy of the list of serial numbers of the forged ballot papers. These ballot papers after checking with the Bar Council records we established that they were forged documents. This is clear
F from the numbers shown in the ballot papers. There is also a very strong possibility that other forged ballot papers containing any of the numbers issued by the Bar Council might have been sent by the person or persons involved. As there are no security features in the ballots issued, the scrutineers are unable to verify the authenticity of the remaining ballot papers.

G

The scrutineers take a very serious view of the fraud committed by the person or persons concerned.

We have to do our independent duty to the whole Bar. For the reasons stated above we hereby declare with deep regret the Bar
H elections for the year 2007/2008 null and void. We would recommend that a fresh election be held and conducted by an independent body of persons of integrity – starting from the printing of the ballot papers to the distributions and receipt of the ballot papers.

I

Sgd.	Sgd.	Sgd.
Inderjit Singh	Dato Hj. Yaacob Hussain Merican	S. Radhakrishnan

Dated: 1st December 2006.

Time: 4.00 pm.

List of Forged Ballot Papers

No.	Serial No.
1	12810
2	12811
3	12811
4	12812
5	12812
6	12813
7	12814
8	12815
9	12816
10	12818
11	12819
12	12820
13	12820
14	12821
15	12818
16	12825
17	12826
18	12827
19	12828
20	12829
21	12831
22	12832
23	12833
24	12840
25	12844
26	12846
27	12848
28	12850
29	12851
30	12852

31	12853
32	12854
33	12855
34	12856
35	12857
36	12858
37	12859
38	12860
39	12861
40	12862
41	12863
42	12864
43	12865
44	12866
45	12867
46	12868
47	12869
48	12870
49	12878
50	12879.

[8] The 2nd defendant (*vide* encl. 30) seeks to strike out the plaintiff's action on the grounds that the plaintiff lacks the *locus standi* to bring and maintain this action and further that the proper parties are not before the court ie, that the plaintiff had failed to bring in all the parties who are directly affected by this application especially the candidates who stood for the elections which is the subject matter of this action even though four out of thirty four candidates have intervened in this action and have become the 5th to the 8th defendants. The 2nd defendant's contentions are also supported by the 5th to the 8th defendants.

[9] Encik Zainur Zakaria, learned counsel for the 2nd defendant, submitted that the plaintiff must show some special injury that he will suffer over and above the other members of the Bar and that the plaintiff had failed to do so. He does not represent the Malaysian Bar in this action. If the complaint is against the way the scrutineers did their job, it was contended, then the proper party to bring an action is the Malaysian Bar or the candidates nominated for the election. It was also submitted on behalf of the 2nd defendant that the plaintiff has not established that he had

suffered or would suffer special injury, that his interest would be peculiarly or substantially affected or that he had been refused something he is legally entitled to by the scrutineers or the Bar Council. Furthermore, it was argued that the plaintiff had a legal obligation to bring in all the candidates as parties and that the plaintiff had failed to do.

[10] Dato' Dr. Cyrus Das, learned counsel for the 7th and 8th defendants (candidates for the election which is the subject matter of this action) in supporting the 2nd defendant's application submitted that the plaintiff is far removed from the defendants and speaks only for himself (the plaintiff) as he was not acting in any representative capacity. The plaintiff is only one of about 12,300 members of the Bar and as a voter was one of the 3,370 who had voted. He neither nominated anyone for the election nor was he a candidate. It was further submitted that the plaintiff cannot deny that his rights have not been denied. It was urged upon the court that the plaintiff must satisfy both the threshold and substantive *locus standi* and that this can be determined at this stage of the striking out application itself. The right person must be before the court to seek any appropriate relief and in this case the plaintiff is not that right person. He is far removed from the events and there are others who may be more directly affected by the relief sought. Thus, it was submitted the plaintiff lacked the *locus standi* both in respect of his interest and the relief sought by him. (See *Government of Malaysia v. Lim Kit Siang* [1988] 2 MLJ 12 & *Tan Sri Haji Othman Saat v. Mohamed bin Ismail* [1982] 2 MLJ 177).

[11] Dato' R.R. Sethu, the 5th & 6th defendants' learned counsel, in supporting the 2nd defendant's application submitted that in respect of both "threshold" and "substantive *locus standi*" the issue was whether the person seeking the relief had the standing ie, the eligibility and the entitlement to bring proceedings and obtain relief in respect of a particular matter.

[12] In this case all the facts in respect of the election and the conduct of the scrutineers are before the court. Thus, the plaintiff's eligibility and entitlement to institute and maintain this action can be determined at the initial stage itself. In my view the issue of "threshold' and "substantive" *locus standi* has, in this case, become a fused one and need not be compartmentalized to be decided in isolation of each other. As has been submitted, all the relevant facts to enable the court to decide on the *locus standi* of

the plaintiff are already before the court. The merits of the case which will be relevant if the proper party with the requisite standing is before the court is not a relevant consideration at this stage of these proceedings. In *Government of Malaysia v. Lim Kit Siang* [1988] 2 MLJ 12 Abdul Hamid CJ (Malaya) put it as follows:

> *Locus standi* is generally understood to mean the right of a party to appear and be heard by a tribunal. A litigant is said to have *locus standi*, in effect standing to sue in a court of law, if that court recognizes his or her ability to institute and maintain proceedings before it. The question of standing is thus separate and distinct from questions of the substantive merits and the legal capacity of the plaintiff. It follows, therefore, that a litigant may lack standing to bring a case which would succeed if brought by the right litigant.

[13] Mr. T. Thomas, learned counsel for the plaintiff, submitted that the plaintiff who by legal compulsion had to be a member of the Bar had the right to vote by virtue of s. 44(c) of the LPA and that this exercise was only completed when the votes are counted and the results are made known. It was further submitted that the issue of *locus standi* had to be decided in two stages ie, "threshold" and "substantive" *locus standi* and that in a striking out case such as the present application by the 2nd defendant the only issue at this stage is that whether the plaintiff had "threshold" *locus standi*. As regards the issue raised by the 2nd defendant that the plaintiff's failure to make all the candidates who stood for the elections as defendants it was submitted that it is not fatal to the plaintiff's claims and reliefs sought. I am of the view that in view of O. 15 r. 6 of Rules of High Court 1980 nothing much turns on this issue of non-joinder.

[14] Reference was made to *Majlis Peguam Malaysia & Ors v. Raja Segaran Krishnan & Other Appeals* [2004] 4 CLJ 239 by Mr. T. Thomas in support of his argument that different considerations apply to members of a statutory body such as the Malaysian Bar in respect of *"locus standi"*. It was submitted that if a member of the Bar can go to court to get an injunction then it follows that a member can come to court in respect of his right under s. 44(c) of the LPA 1976 ie, in respect of a member "to vote on the election of members of the Bar Council". The answer to this is found in the judgment of Richard Malanjum JCA (as his Lordship then was) in that case wherein at p. 271 his Lordship states thus:

To recap the respondent is a member of the Malaysian Bar and all he is asking is for this statutory body not to act beyond its statutory powers and duties. And premised on our concurrence that the proposed resolution of 12 October 1999, the holding of the proposed EGM and the proposed general meeting were *ultra vires* the LPA the question of *locus standi* of the respondent should not arise. It follows that there is no question of the civil court being asked to enforce any criminal law.

In any event it is also our opinion that the respondent had satisfied the 'special damage' test. Being a member of the Malaysian Bar he would definitely have been exposed to potential prosecution for sedition and contempt had the proposed EGM and the general meeting proceeded. The fact that he was only one of the many members should not negate his standing to sue on his own to ensure that he would not be exposed to unnecessary legal complexities. (See: *Bateman's Bay Local Aboriginal Land Council and Anor. v. Aboriginal Community Benefit Fund Pty and Anor.* 155 ALR 684).

[15] In our present case the plaintiff is not in the same position as Mr. Raja Segaran was in that case. The plaintiff herein is not in imminent danger of facing any consequences of any *ultra vires* acts or of being exposed to potential prosecution for any offence.

[16] The scrutineer's report which I have set out above confirm that they have counted the ballots/votes handed to them by the Bar Council for counting. Judging from the report, infact they were able to generally weed out the good from the bad but based on their finding of 50 forged ballots they became doubtful of all of the rest. Thus, it is apparent that the plaintiff's vote was counted by the scrutineers and they reported the outcome of their count to the Bar Council. The report did not contain the names of persons elected presumably because the scrutineers entertained doubts in respect of the authenticity of the ballots after the discovery of the fifty forged ballots. They, thus, placed the matter in the hands of the Bar Council. The Malaysian Bar and/or the Bar Council in the circumstances had to decide what to do about the situation.

[17] In my view the plaintiff's rights as a member of the Bar have not been violated by the scrutineers or the Bar Council and/or the Malaysian Bar to clothe him with the *locus standi* to institute and maintain this action against the scrutineers and/or the Malaysian Bar even though the Malaysian Bar is fully supporting the plaintiff's action in this case.

[18] Based on the facts, circumstances, submissions and authorities cited by all the learned counsels I hold that the plaintiff does not have the *locus standi* to institute and maintain these proceedings (encl. 1). I agree that the proper party to seek relief in this matter, if any, would be the Malaysian Bar acting through the Bar Council and/or the candidates for the elections who would be directly affected by the decision of the scrutineers but they have not. In my view the plaintiff, instead of filing this action so hurriedly, ought to have given the Bar Council space and time to resolve the matter or failing that to decide on the next course of action instead of rushing so very urgently to this court with this action. In this regard, perhaps, the plaintiff in his hurry to file this action appears to have forgotten that disputes such as these may also be resolved through conciliation and mediation which, after all, is actively advocated by the Malaysian Bar.

[19] I allow the 2nd defendant's application (encl. 30) with costs and as a consequence the plaintiff's application *vide* encl. 1 is struck out with costs.